

The mediated voice: Impact of court interpreting on defendants' closing statements

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Right to Closing Statement

In contrary to adversary trials where closing statements are delivered by eloquent legal professionals—defence lawyers and prosecutors, in the jurisdiction with the inquisitorial features, such is the case in Chinese courts, closing statements are conducted solely by lay litigants—the accused—who are the stakeholders of the legal proceedings.

Closing statement, 最后陈述 (*zuihou chenshu*) in Chinese, takes place at the last phase of a criminal trial in Chinese courts. It is a right conferred upon the accused by the Criminal Procedure Law (Article 160). The accused are informed of the right to make a closing statement by presiding judges at the beginning of the trial. Prior to the closing statement, the accused are constantly questioned by other trial participants, disallowed to articulate their opinions irrelevant to the questions. It is only at the stage of the closing statement that they are granted certain freedom to make their own remarks. This is not only an opportunity for the accused to speak out—to reiterate a defence against the accusation or to express remorse for the offences committed—it is also the last chance prior to sentencing for their voice to be heard by judges who are decision-makers in their cases.

Unlike their counterparts in monolingual trials who can have a non-mediated communication with other trial participants, non-Mandarin-speaking defendants have to rely on court interpreters to communicate their propositions. How the voice of defendants in delivering closing statements is mediated by interpreters in Chinese courts is the focus of this paper.

Theoretical Framework

Voice, literally meaning sound articulation, often bears the connotation of the right to speak. But having the right to speak does not guarantee the voice to be heard (Heffer 2013). In Blommaert's view (2005), the notion of voice is associated with one's capacity to make oneself understood. Possession of more or less voice indicates the degree of powerfulness of speakers, which may lead to discursive inequalities.

In an interpreter-mediated courtroom, litigants who cannot speak the language of the court do not possess the capacity to make themselves understood. They rely on the capacity of court interpreters to convey their communicative purposes and propositions. The role of court interpreters, therefore, is to provide linguistic support to these litigants so that they are placed on an equal footing to those without interpreting (Hale, 2004). To this end, court interpreters should strive to achieve a high level of accuracy in their interpretation.

However, what constitutes accurate interpretation is not clearly defined. There has been a debate on the quality of interpreting and the standard of accuracy. While literal, or word-for-word, translation is often the expectation from the judiciary (Berk-Seligson 2002), studies have shown that such an approach could be problematic for no two languages have entirely equivalent meanings (Hale 2004). House (2015) argues that the essential goal of translation is to maintain equivalence in pragmatic meaning across languages. In the case of court interpreting, interpreters should aim to convey in their interpretation the illocutionary force as well as the propositional contents of source messages (Hale 2004, 2007).

Research Methods and Data Analysis

To explore how the voice of English-speaking defendants in Chinese courts is communicated through the mediation of interpreters, discourse analysis is conducted of seven criminal trial recordings which last over 20 hours. These trials involve seven English-speaking defendants and one Mandarin-speaking co-defendant, all charged with drug-related offences. The recordings are transcribed following the conventions in conversation analysis (Sacks et al. 1974) with some adaptations. Speech act theories (Austin 1962; Searle 1969) are drawn upon to analyse the closing statements delivered by defendants and the interpreted renditions. Among the seven English-speaking defendants, four perform the speech act of apology, one defends innocence and two waive the right to make the statement.

Analysing the interpreted renditions of apology, some interpreters are found to adopt the third-person pronoun rather than the first-person pronoun in interpreting the closing statements, changing direct speech of "I'm very sorry" uttered by the defendants into reported speech "ta shuo ta hen duibuqi" (*he said he's very sorry*), which *de facto* changes the speech act of apology into a constative. It is also discovered that interpreters remove rhetorical strategies in remorse and downgrade the emotional tone in the source speeches, thus weakening the illocutionary force of apology performed by the defendants.

In one case where the defendant performs the speech act of defence by denying the accusations and providing his own version of the case, the interpreter produces non-rendition of the denial, omits many details of the facts and evidence. Moreover, the defendant's emotional pleading for innocence is lost in interpreting. As a result of the mediation, the speech act performed by the defendant is altered and mitigated in the target speech.

It is also found that the legal concept of Closing Statement is not easy to be conveyed to defendants who come from different legal culture background. Such non-understanding can result in the defendants giving up their right to articulate their claims as observed in two cases, which may put them at a disadvantage. In one case, while the Mandarin-speaking co-defendant understands the right and pleads to the judge for a lighter penalty, the English-speaking defendant, who may be unable to comprehend, remains silent throughout the phase of the closing statement.

Findings

Drawing upon theories of speech acts and pragmatic equivalence in interpreting, this study empirically reveals how the discursive performance of the accused is constructed, altered and undermined through interpreting. The findings show that the speech acts of apology, remorse and defence performed by the accused are often not maintained in the interpreted renditions. It is argued that when court interpreters fail to faithfully convey the illocutionary force of the accused's utterances, the voice of the accused is not fully heard by trial participants, which places them at a disadvantage and may damage their right to equality and justice.

References

- Austin, J. L. (1962). *How to do things with words*. Oxford, Clarendon Press.
- Berk-Seligson, S. (2002) *The bilingual courtroom: court interpreters in the judicial process*. 2nd ed. Chicago, University of Chicago Press.
- Blommaert, J. (2005) *Discourse: a critical introduction*. New York, Cambridge University Press.
- Hale, S.B. (2004) *The discourse of court interpreting: discourse practices of the law, the witness, and the interpreter*. Amsterdam, John Benjamins Publishing.
- Hale, S. B. (2007) *Community interpreting*. New York, Palgrave MacMillan.
- Heffer, C. (2013) *Projecting voice: towards an agentive understanding of a critical capacity. Working paper*. Cardiff, Cardiff University.

House, J. (2015) *Translation quality assessment: past and present*. London, Routledge.

Sacks, H., Schegloff, E. A. and Jefferson, G. (1974) A simplest systematics for the organization of turn-taking for conversation. *Language*, pp. 696-735.

Searle, J. R. (1969) *Speech acts: an essay in the philosophy of language*. London, Cambridge University Press.